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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,416	08/29/2003	David Edwin Zapp	DEZ 001 P2	6570

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EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/650,416

**Applicant(s)**

ZAPP, DAVID EDWIN

**Examiner**

CARL D. PRICE

**Art Unit**

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09/15/2004; 1/11/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,-7,9-14,16-18 is/are rejected.
- 7) ☒ Claim(s) 4 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **09/18/2006** has been entered.

### Response to Arguments

Applicant's arguments with respect to claims 1-14 and 16-18 have been considered but are moot in view of the new ground(s) of rejection.

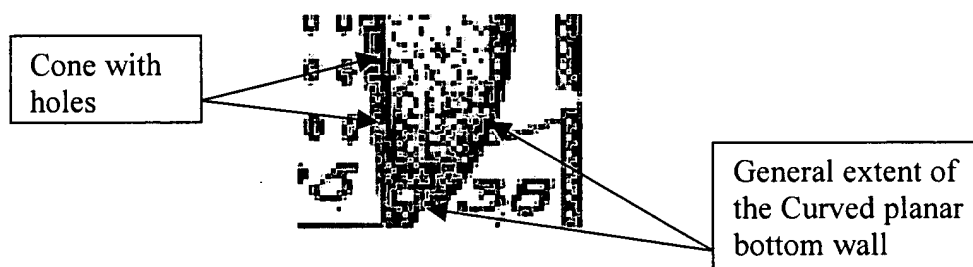
Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on **09/18/2006**, applicant has amended the claims to include for example the following:

"... said planar plate member having a planar plate member top and a planar plate member bottom surface, said planar member having at least one aperture formed therein extending through said planar plate member from said planar plate member top surface to said planar plate member bottom surface, ..."

"... and a bottom surface, said second chamber bottom surface being planar and extending across said second chamber, said second chamber having at least one aperture formed therein, said second chamber having a cone atop said second chamber bottom surface and spaced inwardly of said second chamber sidewall, said cone having a sidewall with a plurality of apertures extending therethrough, ..."

In response to applicant's arguments it is noted that US001305710 (Gibbs) does indeed shows a planar member in the form of a planar plate burner which has at least one aperture extending from a top surface to a bottom surface thereof. These apertures being in the form of the open spaces defined within the lateral extent of the planar plate member and extending inward from the periphery of the plate at the general location of reference character 38.

In response to applicant's arguments it is noted that US001305710 (Gibbs) does indeed show a planar second chamber bottom wall, albeit the bottom wall is in the form of an inwardly extending curved planar section as indicated in the flowing figure. Note also that the cone has a plurality of apertures extending therethrough.



Applicant's argues against the examiner's conclusion of obviousness based on the combined teachings of US002722883 (Rignell) in view of US000177978 (Zugg) and US000177978 (Zugg) in view of US002722883 (Rignell) or US0012290168 (Galvak). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

*The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).*

**Claims: Rejected under 35 U.S.C. 102(b)**

Claims 1, 2, 5, 6, 7, 9 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US001305710 (Gibbs) (of record).

In the claims the statement "A charcoal fire starter" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 11951).

**US001305710 (Gibbs)** shows and discloses fire starter comprising a first chamber (at 1), the first chamber having a sidewall (1,4) with at least one aperture (not referenced; see the apertures and adjustable damper adjacent reference character 1), a top edge (not referenced; adjacent reference numerals 8 and 9), and a bottom surface (not referenced; above reference numeral 2), the first chamber having a planar plate member (35, 36; note that the flat burner forms a planar plate which is the structural equivalent to applicant's broadly claimed "planar plate member" having an aperture (i.e. – an opening or open space) disposed horizontally intermediate the top edge and the bottom surface, the planar member having at least one aperture formed by the gap (see the opening, open space or aperture between burner portions (38; figure 4)), a second chamber (at 23) in cooperating relationship with the first chamber, the second chamber having a sidewall (23), a top edge (21), and a curved planar bottom surface (not referenced; the non-perforated bottom portion of 23 adjacent reference characters 31, 32; see figures 1, 6), the inwardly curved planar bottom surface having at least one aperture (not referenced; on which 32 rests), the second chamber having a cone (25) atop the bottom surface and spaced inwardly of the second chamber sidewall (23), the second chamber bottom (see figures 1 and 6) surface located above the first chamber planar plate member (35, 36).

In regard to claim 2, the first chamber includes retention means (41) supporting the plate shaped burner.

In regard to claim 5, the inwardly curved, or flanged, bottom surface of the second member being inserted through and past the first chamber (4) top edge defines structure which meets the claimed limitation that "said flange telescoping with said top edge of said first chamber".

In regard to claim 6, a removable grating (10,12) is placed "atop" the second chamber, that is the grating is placed above the second chamber in the same manner broadly stated in applicant's claim.

In regard to claim 7, the upper flared portion of the second chamber (23) is structurally and functionally the same as the broadly claimed "a handle on the second chamber sidewall", in that the outward flared portion defines which can be readily gripped by a user in the same manner as a handle.

In regard to claim 9, the planar burner member (35, 36) is removable from the first chamber.

In regard to claims 12 and 13, solid fuel is supported atop the second member bottom surface and a second gaseous fuel, supplied by the plate shaped burner is located below the second member bottom surface.

In regard to claims 14 and 15, as best understood from the applicant's claims and drawing figure 7, showing applicant's "intermediate chamber" (312) with a plurality of supporting members (365) extending downwardly therefrom and being only combined with a "second chamber" (314), the lower portion (1) of US001305710 (Gibbs) is deemed the structural and functional equivalent to applicants "intermediate member" having a plurality of support members (2). The second chamber having a sidewall (23), a top edge (21), and a bottom surface (not referenced; see figure 6), the bottom surface having at least one aperture (not referenced), the second chamber having a cone (25) atop the bottom surface and spaced inwardly of the second chamber sidewall (23).

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

**Claims rejected under 35 U.S.C. 103(a)**

Claims 1-3, 5, 6, 9-13, and 16-18 are rejected under 35 U.S.C. 103(a) as being obvious over US002722883 (Rignell) (of record) in view of US000177978 (Zugg) (of record).

In the claims the statement "A charcoal fire starter" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 11951).

In regard to claim 12, the phrase "being able to have placed thereon a first fuel source ..." is deemed a recitation of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

US002722883 (Rignell) shows and discloses a solid fuel fired broiler comprising a cylindrical first chamber integrally connected to and oriented in a cooperating relationship with a cylindrical second chamber located there above. The first chamber having a sidewall (i.e.- the lower portion of wall 10) with only one aperture (15) located at one "side" of the sidewall, and a bottom surface (i.e. – the lower edge of wall 10), the first chamber having a removable planar apertured plate member (14) supported by retention means (13) and disposed horizontally intermediate a top (i.e. – at a location below the plate 12) of the bottom chamber and the bottom surface or edge of the lower chamber, a second chamber defined by a bottom surface (12) atop which is located a cone (20) and spaced inwardly of the second chamber sidewall (at least a distance defined by the thickness of the "lip 22"), the second chamber bottom surface being



located above the first chamber planar plate member (35, 36). A removable grating (17, 18) for supporting food is placed atop the upper edge of the second chamber.

**US002722883 (Rignell)** discloses the invention substantially as set forth in the claims with possible exception to a “top edge” formed on the first lower chamber sidewall.

**US000177978 (Zugg)** teaches, from applicant's same as well as the same portable solid fuel fire cooker field of endeavor as **US002722883 (Rignell)**, forming the wall portion of a portable cooker in separate cooperating first (A), intermediate (B) and second (D) chambers or sections for the purpose of permitting the chambers to be reconfigured for alternative use. The two top oriented chambers each include telescoping inter-fitting bottom wall flange portions (not referenced) for permitting stable connections therebetween.

In regard to claims **1-3, 5, 6, 9-13, and 16-18**, for the purpose of permitting the chambers to be reconfigured for alternative use and for permitting stable connections therebetween, it would have been obvious to a person having ordinary skill in the art to modify the single wall structure of **US002722883 (Rignell)** to be in the form of separate chambers each having a top edge and including telescoping inter-fitting bottom wall portions flange portions, respectively, in view of the teaching of **US000177978 (Zugg)**.

In regard to claim 3, at least one of the plurality of openings in the planar plate (14) is centrally located.

**Claims 7 and 14 are rejected under 35 U.S.C. 103(a)**

Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being obvious over **US000177978 (Zugg) (of record)** in view of **US002722883 (Rignell) (of record)** or **US0012290168 (Galvak)(of record)**.

**US000177978 (Zugg)** shows and discloses a portable cooker formed in separate cooperating first (A), intermediate (B) and second (D) chambers or sections for the purpose of permitting the chambers to be reconfigured for alternative use. The two top oriented chambers each include telescoping inter-fitting bottom wall flange portions (not referenced) for permitting stable connections therebetween. A cone (d) being supported integrally with and atop the bottom wall of the intermediate chamber (B). The chambers of **US000177978 (Zugg)** include handles (E).

**US000177978 (Zugg)** discloses the invention substantially as set forth in the claims with possible exception to a separate cone (d) being supported, or "resting", on the bottom wall the chamber (B).

**US002722883 (Rignell)** teaches, form applicant's same as well as the same portable solid fuel fire cooker field of endeavor as **US000177978 (Zugg)**, supporting a separate cone (19, 20) on the bottom wall (12) of a chamber (10).

**US0012290168 (Galvak)** teaches, form applicant's same as well as the same portable solid fuel fire cooker field of endeavor as **US000177978 (Zugg)**, securing a separate cone (28) on the bottom wall (12) of a chamber (10).

In regard to claim 7, for the purpose of providing means for gripping and transporting any one of the chamber sections of **US000177978 (Zugg)**, it would have been obvious to a person having ordinary skill in the art to secure handles thereto, in view of the teaching of itself.

In regard to claims 14 and 15, for the purpose of permitting detachable engagement of the cone, it would have been obvious to a person having ordinary skill in the art to modify the **US000177978 (Zugg)** cone to be supported on the upper surface of the bottom surface of the chamber (B), in view of the teaching of **US002722883 (Rignell)** or **US0012290168 (Galvak)**.

**Allowable Subject Matter**

Claims 4 and 8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

**Conclusion**

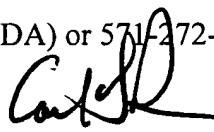
See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
CARL D. PRICE  
Primary Examiner  
Art Unit 3749